

*February*

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
SHERSTAD & WILLIAMS CON., )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHE No. 1090  
FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

A formal hearing was held before the Pollution Control Hearings Board, W. A. Gissberg, presiding, Art Brown and Chris Smith on February 24, 1977 in Seattle, Washington.

Appellant was represented by Mr. Harold Varney, its general superintendent; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and being fully advised, the Pollution Control Hearings Board makes these

1 FINDINGS OF FACT

2 I

3 Pursuant to RCW 43.21B.260, respondent has filed a certified copy  
4 of its Regulation I of which we take notice.

5 II

6 On September 10, 1976 at approximately 10:25 a.m. while on patrol,  
7 respondent's inspector saw a smoke plume coming from appellant's  
8 residential construction site. At the site were two piles of burning  
9 dry, untreated lumber scraps and ashes, each about six feet in diameter  
10 and three feet high. The inspector then took several photographs of the  
11 fires. For the foregoing occurrence, respondent issued two notices of  
12 violation from which followed two civil penalties (Nos. 2961 and 2962)  
13 for \$100.00 each. The two civil penalties are the subject matter of  
14 this appeal.

15 III

16 Section 8.05 provides that:

17 OTHER BURNING. It shall be unlawful for any person to  
18 cause or allow any outdoor fire other than land clearing  
19 burning or residential burning except under the following  
20 conditions:

21 (1) Prior written approval has been issued by the  
22 Control Officer or Board; and

23 (2) Burning is conducted at such times and under such  
24 conditions as may be established by the Control Officer or  
25 Board.

26 Section 3.29 provides for a civil penalty of up to \$250.00 per  
27 day for each violation of Regulation 1.

24 IV

25 Appellant's outdoor fire was not for the purpose of land clearing

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

1 or residential burning.

2 V

3 Appellant made good faith attempts to comply with air pollution  
4 laws. He received a burning permit from the Redmond Fire Department  
5 which purported to allow the burning of untreated lumber. However, the  
6 terms of the permit required that appellant also secure permission from  
7 respondent to burn materials other than natural vegetation. Appellant's  
8 supervisor did not read this latter requirement.

9 Appellant also received a population density verification report  
10 pursuant to Section 8.06 of respondent's Regulation I for an outdoor fire  
11 for land clearing. He believed, erroneously, that this clearance also  
12 allowed him to burn scrap lumber.

13 VI

14 Appellant has no previous record for violations of Regulation I.

15 VII

16 Any Conclusion of Law which should be deemed a Finding of Fact is  
17 hereby adopted as such.

18 From these Findings, the Pollution Control Hearings Board comes  
19 to these

20 CONCLUSIONS OF LAW

21 I

22 The Board has jurisdiction over the persons and over the subject  
23 matter of this proceeding.

24 II

25 Appellant violated Section 8.05 of Regulation I in two instances  
26 for which two penalties under Section 3.29 could properly be assessed.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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III

The two \$100.00 civil penalties are excessive in amount under the facts and circumstances of this case. Each fine should be reduced to \$25.00.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The \$100.00 penalty assessed in Notice and Order of Civil Penalty No. 2961 is reduced to \$25.00.

The \$100.00 penalty assessed in Notice and Order of Civil Penalty No. 2962 is reduced to \$25.00.

DATED this 28<sup>th</sup> day of February, 1977.

POLLUTION CONTROL HEARINGS BOARD

Art Brown

ART BROWN, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Chris Smith

CHRIS SMITH, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER